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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/461,061	12/15/1999	KEITH R. MCCRAE	6056-260	3290

23973 7590 03/15/2002

DRINKER BIDDLE & REATH  
ONE LOGAN SQUARE  
18TH AND CHERRY STREETS  
PHILADELPHIA, PA 19103-6996

EXAMINER
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ROBINSON, HOPE A

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 03/15/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.  
**09/461,061**

Applicant(s)  
**McCrae**

Examiner  
**Hope Robinson**

Art Unit  
**1653**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Jul 13, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-49 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-8 and 12-49 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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***Election/Restriction***

5 1. It is noted that applicant elected Invention I (claims 1-8 and 12-24) in  
Paper No. 16. It is also noted that applicant has added new claims 46-49 which  
read on the elected invention. However, a further restriction is required as  
the present application encompasses compositions comprising several patentably  
distinct peptides.

10 2. A telephone call was made to the applicant's attorney Mr. Daniel Monaco  
on March 13, 2002 to request an oral election to the below restriction  
requirement, but did not result in an election being made. A written  
restriction is being submitted and applicant is required to make an election  
15 to prosecute the claims.

3. Restriction to one of the following inventions is required under  
35 U.S.C. 121:

20 I. Claims 1-8, 12-24 and 46-48 (SEQ ID NO: 1-4) are drawn to a  
pharmaceutical composition, classified in class 514, subclass 12+,  
classified in class 435, subclass 6.

II. Claims 1-8, 12-24 and 46-48 (SEQ ID NO: 5) are drawn to a  
pharmaceutical composition, classified in class 514, subclass 12+,  
classified in class 435, subclass 6.

25 III. Claims 1-8, 12-24 and 46-48 (SEQ ID NO: 9, 11, 13-17, 19-20,22)  
are drawn to a pharmaceutical composition, classified in class  
514, subclass 12+, classified in class 435, subclass 6.

- IV. Claims 25 and 27-45 (SEQ ID NO: 2, 3), are drawn to a method of inhibiting endothelial cell proliferation, classified in class 435, subclass 70.1.
- V. Claims 25 and 27-45 (SEQ ID NO: 9, 10, 11, 15, 16, 20), are drawn to a method of inhibiting endothelial cell proliferation, classified in class 435, subclass 70.1.
- VI. Claims 25 and 27-45 (SEQ ID NO: 5-7), are drawn to a method of inhibiting endothelial cell proliferation, classified in class 435, subclass 70.1.
- VII. Claim 26 is drawn to a method of inducing endothelial cell apoptosis, classified in class 435, subclass 7.21.

4. The inventions are distinct, each from the other because of the following reasons:

Inventions I-VII are related as the composition of Inventions I-III are used in the methods of Invention IV-VII. However, the Inventions are patentably distinct because the methods of Inventions IV-VI and VII are alternative methods of using the composition as Inventions I-III encompasses a method of using the composition with a different end point. In addition, Inventions I-VII encompasses several patentably distinct peptides which are physically and structurally different, thus, differ in function (see the sequence listing). For example on page 6 of the specification it is disclosed that SEQ ID NO: 5 has substantial amino acid homology to SEQ ID NO: 8 which distinguishes Invention II. Therefore, if any one of Inventions I to VII is elected, the claims will only be examined with respect to the elected sequences.

Inventions IV-VI and Invention VII are patentably distinct because the

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methods have different endpoints which are opposed.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventor-ship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventor-ship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Hope A. Robinson whose telephone number is (703)308-6231. The Examiner can normally be reached on Monday - Friday from 9:00 A.M. to 5:30 P.M. (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor Christopher S.F. Low, can be reached at (703)308-2923.

Any inquiries of a general nature relating to this application should be directed to the Group Receptionist whose telephone number is (703)308-0196.

Papers related to this application may be submitted by facsimile transmission. The official fax phone number for Technology Center 1600 is (703) 308-4242. Please affix the Examiner's name on a cover sheet attached to your communication should you choose to fax your response. The faxing of such

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papers must conform with the notice published in the Official Gazette, 1096 OG  
(November 15, 1989).

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Hope A. Robinson, MS<sup>HAR</sup>  
Patent Examiner

A handwritten signature in cursive script, reading "Karen Cochrane Carlson".

KAREN COCHRANE CARLSON, PH.D  
PRIMARY EXAMINER